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SUBJECT: AUSTR ASSESSMENT: VIETNAM GSP AND LABOR REFORM

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11. (SBU) Summary: AUSTR Lewis Karesh's December 3-7 visit to Vietnam focused on labor reform, especially freedom of association and collective bargaining, the statutory requirements for GVN to receive GSP status. After a series of frank discussions regarding labor issues, the GVN indicated that such fundamental reforms would take time, but the GVN was working on them and the National Assembly would consider reform legislation in 2011 that would meet international standards and be compliant with GSP requirements. The GVN also indicated it hopes to obtain GSP status as soon as possible as part of the broader US-Vietnam relationship and in consideration of its commitment to labor reform. End Summary

FREEDOM OF ASSOCIATION

12. (SBU) Karesh had a series of discussions with representatives from the Ministry of Trade (MOIT), Ministry of Labor (MOLISA), Ministry of Interior (MOI), Vietnam General Confederation of Labor (VGCL), Vietnam Chamber of Commerce (VCCI), International Labor Organization (ILO), the American Chamber of Commerce and NGOs working on employment issues. It emerged that the GVN has three potential areas of labor reform and each is the responsibility of a different government entity: reform of the Labor Code (MOLISA), reform of Trade Union Law (VGCL), and a general law on associations (MIA) which would be the most overarching. Karesh clearly conveyed that in order to be eligible for GSP, the GVN must demonstrate that it is taking steps towards labor reform including freedom of association and collective bargaining. The GVN said the National Assembly would consider labor reforms in 2011 which would meet international and GSP labor standards and which would be appropriate for the domestic needs of Vietnam.

STAR PROJECT, NGOS AND THE ILO

13. (SBU) On December 4, Karesh met with representatives of the STAR project, a USAID funded governance reform program which had assisted the GVN with preparations for BTA and WTO membership. In 2008, MOLISA approached STAR and requested assistance on labor code reform. MOLISA must present the revised Labor Code to the National Assembly by 2010 for consideration in 2011. According to STAR, freedom of association issues are the responsibility of the VGCL who has not requested any assistance from the STAR project. STAR said that the National Assembly had requested revision of the labor code, but that such revisions may not address freedom of association issues. The revision of the Trade Union law by the VGCL is occurring as a parallel process but it is not clear yet when they would present the changes to the National Assembly. STAR noted that the ILO is also working with MOLISA and VGCL and said the ILO has a long term time frame and a narrow definition of freedom of association. Key aspects of the proposed labor code reform would include improving the ability of MOLISA to enforce laws. Strikes

continue to be a problem in Vietnam and dispute resolution mechanisms are very important.

14. (SBU) Karesh met with representatives from American and Vietnamese labor NGOs who support people with disabilities. He asked about their legal status and general freedom of association of non-governmental organizations. The representatives said they are able to work with MOLISA and VGCL on basic issues for people with disabilities such as workplace access, but they lack a legal framework for their non-governmental status. Previously the National Assembly had considered comprehensive Freedom of Association legislation, but it was withdrawn for further study. According to the NGO representatives, Vietnam has six mass organizations organized under the Fatherland Front. These six organizations including the VGCL, the Women's Union and the Farmer's Union, are all part of the GVN. While they have representatives from the national to the grassroots level, they are not independent of the GVN. The NGO representatives indicated that strikes are legal only if backed by a union, but that the unions are arms of the state.

15. (SBU) Karesh met with the ILO who has been working with the VGCL and MOLISA over the past 5 years. The ILO said they have seen real progress and dedication from the VGCL to improve its capacity and were encouraged by the GVN's ratification of ILO Core Conventions. The ILO said, however, that at the grassroots level the VGCL lacks the capacity to effectively represent workers and that basic knowledge of labor relations is lacking at all levels among all the partners. At the grassroots level, the ILO has not observed any examples of independent unions forming nor strike leaders becoming on-going union leaders. In a strike situation, leaders emerge for that strike at that particular enterprise but they are not linked to other strikers in other enterprises. The ILO also indicated that union leaders are appointed rather than elected and that it has not observed the occurrence of any real collective bargaining. The ILO

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is continuing its capacity building work with the VGCL and MOLISA.

ROUNDTABLE OF REFORM: PART I: LAW OF ASSOCIATIONS - MOI

16. (SBU) Karesh participated in detailed discussions at a roundtable organized by MOIT and attended by MOLISA, VGCL, and MIA. He asked for updates regarding labor code reform, trade union law reform and the law of association. The representative from the MIA said that currently there is no law of associations pending before the National Assembly; it was withdrawn for further study and re-drafting and does not have a timeline for submission. This legislation may not cover the VGCL nor will it focus on labor issues. He said there is not a current draft available for the US to review. MIA said that labor issues would be covered by Trade Union Law and the Labor Code.

ROUNDTABLE OF REFORM: PART II: TRADE UNION LAW - VGCL

17. (SBU) MOIT then reviewed the Vietnamese law making process emphasizing that all legislation must be consistent. No law should contradict other laws but that sometimes there is overlap which must be clarified. For example, the official said it is still unclear whether the law on associations would cover the VGCL or whether it would be governed by trade union law. He said that Vietnam had successfully changed its laws to meet WTO standards and would do the same for GSP. He said that Trade Union law would cover the VGCL and key worker issues.

18. (SBU) The VGCL representative reviewed the history of trade unions in Vietnam pointing out that they were formed in 1929 and from then to 1975 had been responsible for both protecting worker's rights and helping get independence for the country. Over the years, the VGCL has undergone profound changes. In a centrally planned economy, there was no conflict between the needs of the employers and the needs of the workers. As the economy has opened to include private and foreign businesses, the dynamics between workers

and employers changed. The Trade Unions are now in transition to build their capacity to meet increasing needs for worker protection.

The Constitution of Vietnam in Article 10 and the Labor Code recognize that the VGCL protects workers. Currently the VGCL has over 6,000,000 workers in over 93,000 grassroots enterprises. The VGCL is also recognized internationally by trade unions in other countries. They have a relationship with the AFL-CIO for example.

¶9. (SBU) GVN representatives said that workers have the right to decide whether or not to join the VGCL and that no workers are forced to join. Even if the workers are not VGCL members, the VGCL will still protect them. The VGCL also recognizes the need for reform of the Trade Union laws and asked the National Assembly for this. The National Assembly agreed to amend the Trade Union law and has tasked the VGCL with drafting the new law. The National Assembly would like to have the legislation draft by 2010 and would vote on it in April of 2011. The VGCL just concluded its annual national conference and will be setting time lines for drafting. The Labor Code, which is being drafted by MOLISA, and the Trade Union Law, which is being drafted by the VGCL must be consistent. The Trade Union Law amendments will include measures to enforce compliance by employers. The VGCL also has a 5 year target to get 1.5 million new members.

ROUNDTABLE PART III: LABOR CODE REFORM - MOLISA

¶10. (SBU) MOLISA said they have the lead role in drafting the legislation for the reform of the Labor Code. The current law is complicated and difficult to implement. The new Code should help Vietnam continue to integrate internationally by meeting international standards such as the UN Convention on People with Disabilities. MOLISA said they look to the ILO for international labor standards and have ratified five out of eight of the core ILO Conventions. MOLISA stated they want to meet the labor requirements for GSP to continue towards a market economy. All new laws must meet national and international requirements.

PRIVATE MEETING WITH MOLISA VICE MINISTER: GSP

¶11. (SBU) In a private meeting, MOLISA Vice Minister Hoa who had led the MOLISA delegation in the US-Vietnam Labor Dialogue in DC in October 2008, said that he hoped Karesh understood that while lacking specific details at this time, the GVN was firmly committed to Labor Code reform which would be consonant with free market principles and international standards. Karesh said the GVN had provided a great deal of helpful information and it was clear that

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the GVN had positive intentions, but it would still be difficult for USTR to make a determination without a more detailed plan.

¶12. (SBU) Hoa encouraged Karesh to understand the Vietnamese context that the Labor Code revision must take place step-by-step and the revision process has specific procedures. He said that in the current times of economic difficulty, MOLISA is working to ensure that workers have employment. He said that MOLISA is working with the ILO and STAR and the Labor Code will be revised by mid ¶2009.

¶13. (SBU) Hoa said that Deputy Prime Minister Hai, who had just returned from the US, told him that the previous MOLISA visit to the USA had not been successful and that Hai was conducting internal meetings to discuss GSP compliance. He said Hai told him that the US-Vietnam relationship is a strong one and that GSP is an important issue but not the only one. Hoa said he hoped the US would grant GSP status because of its importance for bilateral economic and trade relations. It also would help workers in Vietnam and reflect the good state of bilateral ties.

BUSINESS VIEWS ON LABOR REFORM

¶14. (SBU) Karesh met with the General Director of Ford Vietnam who

is the current Chairman of the American Chamber of Commerce and the Director General of the Bureau for Employer's Activities in Vietnam from VCCI. He expressed concerns regarding the number of strikes in Vietnam and the lack of capacity of dispute resolution mechanisms. He cited weaknesses in the labor law and in the capacity of the VGCL to provide effective representation of workers. The Ford representative gave the example of his own factory in which the workers had an in-house union which represented them to management. This organization was effective but it existed only in his plant. The business representatives said they would appreciate and benefit from having a better represented work force with which they could negotiate and settle disputes.

TPP AND LABOR ISSUES: FUNDAMENTALLY LINKED

¶15. (SBU) Karesh provided a briefing on labor requirements for TPP membership to MOIT and MOLISA. He emphasized that Vietnam will need labor reforms not only to resolve their domestic labor concerns, but that increasingly trade agreements and partnerships such as TPP will have labor components. Karesh said that the GVN will have to meet international labor standards as part of TPP. MOLISA responded that they support Labor Code reform, but they are not responsible for the overall Freedom of Association laws or Trade Union law reform.

COMMENT

¶16. (SBU) Comment: The USG has clearly conveyed through multiple channels that labor reforms regarding freedom of association and collective bargaining are key requirements to achieve GSP status.
End Comment

¶17. (SBU) This cable was cleared by AUSTR Lewis Karesh.

MICHALAK